

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TONI MARIE MOTHE,)	
)	CASE NO. C20-5856-RSM
Plaintiff,)	
)	ORDER GRANTING PLAINTIFF'S
vs.)	MOTION FOR ATTORNEY'S FEES
)	UNDER 42 U.S.C. § 406(b)
COMMISSIONER OF SOCIAL SECURITY,)	
)	
Defendant.)	
)	

Presently before the Court is Plaintiff Toni Marie Mothe's Motion for Attorney's Fees under 42 U.S.C. § 406(b). Dkt #23. Plaintiff seeks attorney's fees in the amount of \$2,917.52. *Id.* On September 13, 2022, Defendant Commissioner of Social Security filed a response noting the Commissioner was "unable to state a position on the merits of Plaintiff's request" due to Plaintiff's failure to attach exhibits referenced in her Motion. Dkt. #24 at 1. On September 28, 2022, Plaintiff filed a reply admitting her Motion's deficiencies and finally attaching the aforementioned exhibits. Dkt. #25. On October 5, 2022, the Court directed the Commissioner to file a sur-response by October 12, 202, and allowed Plaintiff to file a sur-reply if any by October 17, 2022. Dkt. #26.

1 On October 6, 2022, Commissioner filed a sur-response stating it does not object to the
 2 total amount sought by Plaintiff. Dkt. #27. As a result, the Court finds a sur-reply from Plaintiff
 3 unnecessary.

4 Attorney's fees may be awarded to a successful social security claimant's lawyer for his or
 5 her representation before a court pursuant to 42 U.S.C. §§ 406(b). *Straw v. Bowen*, 866 F.2d 1167
 6 (9th Cir.1989). Plaintiff must apply to the Social Security Administration for an award of fees for
 7 representation at the administrative level. 42 U.S.C. § 406(a); *Stenswick v. Bowen*, 815 F.2d 519
 8 (9th Cir.1987). Under 42 U.S.C. § 406(b), the Court may allow a reasonable fee for an attorney
 9 who represented a Social Security Title II claimant before the Court and obtained a favorable
 10 judgment, as long as such fee is not in excess of 25% of the total past-due benefits. *See Grisbrecht*
 11 *v. Barnhart*, 535 U.S. 789 (2002). Plaintiff was awarded \$59,254.10 in past due benefits. Dkt.
 12 #25 at 15. Twenty-five percent of past due benefits is \$14,813.52. The Court concludes that the
 13 attorney's fees sought by counsel are reasonable within the meaning of § 406(b). Plaintiff's
 14 counsel is entitled to a gross attorney fee of \$2,917.52. Because the Court denied Plaintiff's motion
 15 for EAJA fees as untimely (Dkt. #23), counsel is entitled to a net award of \$2,917.52.

16 CONCLUSION

17 Accordingly, having reviewed Plaintiff's Motion, the Commissioner's Response,
 18 Plaintiff's Reply, the exhibits and declarations attached thereto, the Commissioner's Sur-
 19 Response, and the remainder of the record, the Court ORDERS as follows:

- 20 1) Plaintiff's Motion for an Award of Attorney's Fees (Dkt. #23) is GRANTED. Plaintiff's
 21 counsel is awarded 42 U.S.C. § 406(b) gross attorney fees in the sum of \$2,917.52. The
 22 Commissioner is directed to send to Plaintiff's counsel an award of \$2,917.52, minus any
 23 applicable processing fees as allowed by statute;
- 24 2) This payment of fees comprises 4.92% of Plaintiff's past-due benefits;

1 3) Any payment of fees is from claimant's withheld past due benefits. If the Commissioner
2 has not withheld past-due benefits sufficient to satisfy this order and Plaintiff's attorney
3 reports he is unable to collect the fee from the claimant, the Commissioner will satisfy this
4 Order via the procedures in the Program Operation Manual System (POMS) GN
5 03920.055.C.

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7 IT IS SO ORDERED.

8 DATED this 13th day of October, 2022.
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12 RICARDO S. MARTINEZ
13 UNITED STATES DISTRICT JUDGE
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